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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,534	09/04/2003	Fred A. Brown	917/A03	5575
2101	7590	05/20/2005		
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			EXAMINER CLARKE, SARA SACHIE	
			ART UNIT 3749	PAPER NUMBER
DATE MAILED: 05/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/655,534	Applicant(s) BROWN ET AL.	
	Examiner Sara Clarke	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/6/04, 1/27/05, and 4/14/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9,10 and 12-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7,9,10 and 12-17 is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/2/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 18-21 are rejected under 35 U.S.C. 102(b) as anticipated by Kam-Hoi (US 5791763).

Kam-Hoi discloses the invention as claimed including a voltage reducer A capable of converting an input AC voltage to a reduced voltage, the voltage reducer having a set of prongs (see Fig. 3) capable of plugging into an AC outlet; and an inducer unit 5 having a unit housing and an air moving device within the unit housing, the inducer unit being removably coupleable with the voltage reducer via jack j1, the inducer unit being energized by the reduced voltage (see column 3, lines 56-60 and column 4, lines 45-54). With respect to the limitation of "two prongs," as shown in Fig. 6, jack j1 connects to ground. The adapter A necessarily includes two prongs, in order to complete the circuit loop.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doss (US 5199385) in view of Rowlette et al. (US 5720231).

Doss discloses the invention substantially as claimed including a draft inducer having a housing 100. Doss does not disclose a voltage reducer capable of converting an input AC voltage to a reduced DC voltage. Doss also does not disclose a DC blower.

Rowlette et al. discloses a draft inducer for a furnace and teaches the use of a voltage reducer T1/DMB1-DMB4 capable of converting an input AC voltage to a reduced DC voltage. As is well known in the art of all electrical appliances, including fans, the reason electricity is provided at a higher voltage than usable by most appliances is to reduce line losses. See Grossner, page 4, last paragraph. Thus, a step down transformer (aka voltage reducer) is necessary to provide the fan of Rowlette et al. with electricity from a wall socket. Rowlette et al. also discloses a DC blower 28. See col. 4 and Figs. 2c and 2d. Using a DC blower allows for control of the blower motor. See the summary of the invention.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the draft inducer of Doss with the voltage reducer capable of converting input Ac voltage to a reduced Dc voltage as taught by Rowlette et al. for the purpose of powering a lower voltage DC inducer and circuitry.

Regarding claim 3, it is noted that the material used for housing 100 of Doss is flexible at least to some degree. Applicant has not disclosed any degree of flexibility in his specification.

Allowable Subject Matter

Claims 5-7, 9, 10, 12-17 are allowable.

Response to Arguments

In traversing the rejection of claims 18-21 as anticipated by Kam-Hoi, applicants argue that a fan is not a draft inducer. More specifically, applicants argue "[d]raft inducer's [sic] as opposed to fans induce the flow of air and exhaust through a ducted medium wherein an impedance is present. Thus, draft inducers operate in high pressure and high flow rate systems, whereas fans operate in low pressure and low flow rate systems and experience negligible impedance."

"While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function." MPEP 2114, citing In re Schreiber, 128 F.3d 1473, 477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997)

In the current application, it is noted that applicant relies upon the specification to provide an intended use of the draft inducer. That is, applicant defines a draft inducer by the environment in which it is used. Applicant does not provide any actual structure in the section quoted from the specification that differentiates the claimed draft inducer from the structure disclosed by Kam-Hoi.

"The PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." In re Morris, 44 USPQ2d 1023 (Fed. Cir. 1997).

It is noted that the ordinary meaning of the term "draft inducer" is the same as a "fan." Both devices produce a draft or fluid flow.

Reiterating from above, applicants argue "[d]raft inducer's [sic] as opposed to fans induce the flow of air and exhaust through a ducted medium wherein an impedance is present. Thus, draft inducers operate in high pressure and high flow rate systems, whereas fans operate in low pressure and low flow rate systems and experience negligible impedance." It is unclear where these definitions of fans and draft inducers come from. They appear to be mere arguments of counsel not supported by evidence. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

Applicant's arguments with respect to claims 1, 3, and 4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this or earlier communications from the examiner should be directed to Sara Clarke whose phone number is 571-272-4873. The examiner normally can be reached Mon-Fri, 8:30-1:00.

If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at 571-272-4877. The fax number for the organization where this application is assigned is 703-872-9306.

Status information for an application is available from the Patent Application Information Retrieval (PAIR) system. Status information for published applications is available from Private or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about PAIR, see <http://pair-direct.uspto.gov>. For questions on access to Private PAIR, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sara Clarke 
Primary Examiner
Art Unit 3749

April 28, 2005